IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 174 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI RANCHODBHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

Mr.HH PATEL, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/06/2001

ORAL JUDGEMENT

1. Four accused, including the revisionist, faced trial u/s.332, 323, 504 read with Section 114 of the Indian Penal Code. Three of them were acquitted. Only the revisionist was convicted u/s.332 I.P.Code and was

sentenced to under-go one year's imprisonment and to pay fine of Rs.1000/-. The revisionist preferred Appeal which was dismissed by the Lower Appellate Court on 11.4.2000. Accordingly this revision has been filed by the Revisionist Mohanbhai Ranchhodbhai Baria.

2. At the time of admission of this revision it was mentioned in the order sheet dated 6.11.2000 that it was admitted only on question of sentence. It, therefore, follows that concurrent findings recorded by the trial Magistrate and the Lower Appellate Court were not proposed to be interfered by this Court at the time of admission of this revision. As such only on question of sentence this Revision has to be heard and decided.

3. Shri E.E.Saiyed, learned Counsel for the revisionist has argued that the revisionist is aged about 72 years and since it is his first offence it is a fit case in which benefit of probation under the Probation of Offender's Act should be given to the revisionist. It is opposed by Shri H.H.Patel, learned A.P.P. for the respondent.

4. After going through the Judgments of the two Courts below it is clear that the revisionist is an aged person. This observation was made by the trial Magistrate in Para : 16 of his Judgment. It is also mentioned in the same paragraph that it was argued on behalf of the accused before the trial Magistrate that this was first offence of the accused. However, no material was placed that there were other antecedents against the revisionist.

5. The xerox copy of injury report has been shown. It indicates that only one lacerated wound 2-1/2 cm x 1/2 was found on fore-head and contusion over right scapula measuring 2 cm. x 1 cm. In the injury report it is not mentioned whether these injuries were grievous or simple. No X-Ray was advised nor any X-Ray Report was produced. It, therefore, follows that the injuries were simple in nature.

6. Looking to the prosecution story as alleged and proved it appears that it was not a pre-mediated action of the revisionist against the injured who was police constable and who was engaged in Petroling duty. There was some confusion amongst the revisionist and his companions, that the otherside were thieves who were planning to commit theft of the crops in the dark hours of the night. It is under this impression that two blows were given by the revisionist by blunt object. Under the

circumstances I find that it is not a case where benefit of Probation of Offenders Act should be given to the revisionist. However, looking to the prosecution story which was found established by the two Courts below it seems that the sentence awarded by the trial Magistrate and confirmed by the lower Appellate Court is excessive.

7. Section 332 of the Indian Penal Code provides that... "whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both". The trial Magistrate has awarded one year's imprisonment without clarifying whether it would be simple imprisonment or rigorous imprisonment. Fine of Rs.1000/- was also impossed, but no default clause was provided in the order of the trial Magistrate as to what will happen if fine is not paid by the revisionist. Since discretion is given under Section 332 I.P.C. to award substantive sentence extending three years' imprisonment or with fine or with both, looking to the fact and circumstances of the case interest of justice will be met if quantum of fine of Rs.1000/- is enhanced to Rs.2000/- and substantive imprisonment of one year is quashed and set aside.

8. The Revision, therefore, partly succeeds and is partly allowed. The sentence of one year's imprisonment awarded to the revisionist by the two court's below u/s.332 I.P.Code is set aside. The revisionist shall pay a fine of Rs.2000/-, out of which Rs.1000/- shall be paid as compensation to the injured Kanaksinh Jitsinh Vaghela. Fine shall be deposited with the trial Magistrate within a period of two weeks from today, failing which the revisionist shall under-go three months' rigorous imprisonment.

sd/-

Date : June 19, 2001 (D. C. Srivastava, J.)

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